

1 EDMUND G. BROWN JR.
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 State Bar No. 132645
110 West A Street, Suite 1100
4 San Diego, CA 92101
Telephone: (619) 645-2105
5 Facsimile: (619) 645-2061
Attorneys for Complainant

6
7 **BEFORE THE**
8 **BOARD OF REGISTERED NURSING**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. *2011-987*

12 **DAVID MICHAEL MELLOTT**

A C C U S A T I O N

13 **927 Wind Drift Drive**
14 **Carlsbad, CA 92011**

15 **Registered Nurse License No. 665392**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., R.N. ("Complainant") brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing ("Board"),
Department of Consumer Affairs.

21 2. On or about September 12, 2005, the Board issued Registered Nurse License Number
22 665392 to David Michael Mellott ("Respondent"). The Registered Nurse License was active at
23 all times relevant herein but became delinquent on February 28, 2009 and has not been renewed.

24 **JURISDICTION AND STATUTORY PROVISIONS**

25 3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
26 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
27 inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of
28 the Nursing Practice Act.

4. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Section 2811 subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

5. Sections 118 subdivision (b) of the Code also grants the Board jurisdiction over suspended, expired, forfeited, cancelled, or surrendered licenses:

“The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.”

6. Section 2761 of the Code provides grounds for disciplinary action:

“The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

• • • • •

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.”

COST RECOVERY

7. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

///

///

CAUSE FOR DISCIPLINE

(Disciplinary Action by the Florida Board of Nursing)

8. Respondent is subject to discipline pursuant to Section 2761 subdivision (a)(4) of the Code on the grounds of unprofessional conduct because he was disciplined by the Florida Board of Nursing ("Florida Board"), as follows:

9. On or about September 28, 2009, the Florida Board issued a Final Order in the disciplinary action entitled, *Department of Health v. David Michael Mellott*, Case No. 2008-17041. In that Final Order, after Respondent failed to respond to an administrative complaint filed against him, the Florida Board disciplined Respondent's license by placing it on probation for two years, indefinitely suspending it until Respondent underwent an evaluation by a substance abuse intervention group, and publicly reprimanding it. The Final Order found that the uncontested facts of the administrative complaint showed as follows:

10. In 2008, while working as a registered nurse at Lee Memorial Health System in Fort Myers, Florida, Respondent engaged or attempted to engage in the possession, sale, or distribution of controlled substances by misappropriating fentanyl, a Schedule II controlled substance under both California and Florida law,¹ from his employer.

11. Respondent also failed to document his misappropriation of fentanyl on the charts of two different patients.

12. Under Section 2761 subdivision (a)(4) of the Code, the Florida Board's disciplinary action against Respondent for diverting controlled substances for his own use and for failing to properly document patient charts is ground for the California Board to take disciplinary action.

///

///

///

///

¹ Fentanyl is a opiate used for pain relief. See California Health and Safety Code section 11055(c)(8)(listing fentanyl as a Schedule II opiate) and Florida Statutes Section 893.03(2)(same).

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

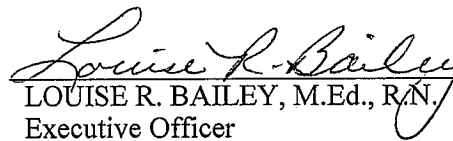
1.1. Revoking or suspending Registered Nurse License Number 665392, issued to David Michael Mellott;

1.2. Ordering David Michael Mellott to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code Section 125.3; and,

1.3. Taking such other and further action as deemed necessary and proper.

DATED:

June 20, 2011


LOUISE R. BAILEY, M.Ed., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

LA2011600779
60639603.docx